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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jacqueline S. Corley, Magistrate Judge

IN RE: FACEBOOK, INC. CONSUMER )  
PRIVACY USER PROFILE LITIGATION.) NO. 18-MD-02843 VC (JSC)  
)

San Francisco, California  
Wednesday, December 9, 2020

**TRANSCRIPT OF ZOOM WEBINAR PROCEEDINGS**

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Wednesday - December 9, 2020

10:00 a.m.

## PROCEEDINGS

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**THE CLERK:** Court is now in session. The Honorable Jacqueline Scott Corley is presiding.

Calling civil action 18-md-2843, In Re: Facebook Inc.

Go ahead and start.

**THE COURT:** All right. Good morning, everyone. You don't have to make your appearances. And thank you for your status update.

Let's just go through and talk through the things and see where we are at and what we can do.

So the first issue is search terms for the 5 through 8 group. And I'm not sure if there is anything to discuss here. I think the Plaintiffs said they were hopeful the parties could work out the schedule, and I don't believe Facebook said anything about it.

So, Ms. Weaver, or whoever from the Plaintiff wants to address that. Is there anything to discuss?

**MS. WEAVER:** Not from our perspective, Your Honor.

**MS. DAVIS:** No.

**THE COURT:** Okay. Great. We will just knock that off.

Now, the second thing was RFPs 14 to 17, Plaintiffs' RFPs.

And Facebook seemed to suggest that the search terms had

1 been agreed to for those, but Plaintiffs seem to suggest that  
2 they had not. So I don't know where we are with that.

3 **MS. WEAVER:** Mr. Ko will address that.

4 **MR. KO:** This is David Ko on behalf of Plaintiffs.

5 So really the reason why we identified that issue in our  
6 statement -- two reasons -- I mean, I think this is likely  
7 coming at a head such that we will brief this to you shortly.

8 To answer your question, the reason why these RFPs are not  
9 actually covered by the -- or this dispute, more specifically,  
10 is not covered by the RFPs and the search strings is that we  
11 are seeking a targeted search and a certain -- and a specific  
12 group of materials that we believe Facebook should produce  
13 pursuant to a targeted search.

14 And that is separate from the documents that they may  
15 potentially produce that are, you know, possibly responsive to  
16 these RFPs.

17 And just to add some color to that, you know, the search  
18 strings that we agreed to -- and, quite frankly, that you  
19 ordered in Discovery Order Number 8, I believe -- there are  
20 actually only one search string that specifically relates to  
21 these -- that solely relates to these RFPs.

22 And so -- and in this next round of negotiations, I think  
23 there are only about three or four strings that the parties are  
24 actually negotiating such that these strings may produce  
25 potentially relevant information.

1       So what we are asking for is something different than I  
2 think what Facebook is saying. We are just saying: Look,  
3 there are these five categories of information that are  
4 responsive to these RFPs; and we believe that they can produce  
5 this information pursuant to targeted searches.

6       And that is, again, distinct from any of the search string  
7 negotiations.

8           **THE COURT:** Why is it distinct?

9           **MR. KO:** Well, this has a pretty long and tortured  
10 history. We have been going back and forth with Facebook on  
11 this since January.

12          Actually, we engaged in an extensive letter writing  
13 campaign from February to April; and we have gone back and  
14 forth with them.

15          And they said clearly that: A, this information is  
16 actually irrelevant. B, that they don't have any responsive  
17 documents anyways. And C, even if they did, that they would be  
18 highly confidential and protected.

19          So, you know, we found that hard to believe because these  
20 by -- just to provide some context, these RFPs seek documents  
21 related to how Facebook values, quantifies and monetizes the  
22 user content information at issue in this case.

23          And they said: Look, we don't have anything responsive to  
24 those requests.

25          We found that hard to believe; right. I mean, they are a

1 company -- this is a company that last year alone generated  
2 \$70 billion in revenue, you know, 98 percent of which came from  
3 third parties.

4 So they said -- we said let's try to provide some  
5 clarification so here are -- so this dispute matured to a point  
6 where we said: Here are five specific categories that we  
7 believe will be responsive to this request.

8 Can you please run targeted searches on them? And they  
9 said no.

10 And they said: Why don't we do -- why don't we go with  
11 the search string negotiations and see if we can actually come  
12 up with some documents that may potentially be responsive to  
13 the requests.

14 And we gave that a shot. And we thought that maybe that  
15 they would run targeted searches in connection with that  
16 negotiation process, but what has become evident is that they  
17 do not want to. And so I think, you know, at this point --

18 **THE COURT:** Well, did you propose them as part of the  
19 search string submission?

20 **MR. KO:** We proposed one string -- two strings, excuse  
21 me, that relates solely to 1417. But, remember, we had a  
22 finite number of strings we could negotiate and propose.

23 And so we took those somewhat off the table, right,  
24 because there were other strings that we were negotiating that  
25 we believe were responsive to other discovery requests because

1 we didn't have -- in the normal course we would say: Look,  
2 here are, you know, 10 or 15 strings that could have been  
3 responsive to these requests.

4 And they said -- well, you know, we only could propose a  
5 few to, Your Honor. Obviously we ended up proposing only 29 or  
6 27 for you to rule on. And so that -- that is one response to  
7 your question.

8 The other response --

9 **THE COURT:** I guess I don't really understand. I  
10 mean, the limit was there to require to prioritize. It wasn't  
11 so that you could -- that is just sort of a different matter.

12 I mean, it seems like the nub of it -- from what I  
13 understand -- is Facebook says they don't really have what you  
14 are looking for, and you say that they do.

15 And maybe what you need to do is take that 30(b)(6), and  
16 you will identify it; and then they will have to produce it, as  
17 opposed to in a way you are kind of shooting in the dark.

18 **MR. KO:** Well, that's one way of doing it, but I  
19 think -- two responses to that.

20 One, the documents that will be produced here are not  
21 pursuant -- are really not the type of documents that will be  
22 produced pursuant to custodial searches.

23 These are financial documents that relate to, for example,  
24 marketing and business brands, financial documents that  
25 underlie their 10Ks and 10Qs.

1       So these aren't -- you know, it's not, you know, Cari  
2 Laufenberg, let's find all her documents that talk about this.  
3 It is actually a non-custodial search in the relevant  
4 department where we pull that material.

5       And I think -- it identifies --

6           **THE COURT:** What would it be? What would it be?

7           **MS. WEAVER:** Your Honor, let me give an example  
8 because I think we do want the e-mails. But accounting  
9 documents where Facebook is assessing the value of the data  
10 that its getting, we know that, for example, in their  
11 accounting documents it will be there. And that is a targeted  
12 search. And those documents aren't targeted by the search  
13 terms.

14          The search terms right now are only being applied to a  
15 selected number of --

16           **THE COURT:** I understand that. For e-mails and things  
17 like that, it wouldn't be an accounting document. So that --

18           **MS. WEAVER:** Exactly.

19           **THE COURT:** -- I understand.

20           **MS. KUTSCHER CLARK:** Your Honor --

21           **MS. WEAVER:** -- take the 30(b) (6), I think that is a  
22 good idea. Apologies.

23           **THE COURT:** Yeah. Was that Ms. Kutscher?

24           **MS. KUTSCHER CLARK:** Yes, Your Honor, thank you.

25          The issue we are having here is that the RFPs at issue

1 seek valuation documents about very particular types of  
2 valuations.

3 They are asking about documents how Facebook values  
4 individual pieces of user data; how Facebook values the named  
5 Plaintiffs' data.

6 What we have been telling Plaintiffs -- and we have  
7 investigated this extensively -- is that Facebook simply  
8 doesn't value information that way. So to the best of our  
9 knowledge there wouldn't be responsive materials.

10 The other issue here is that the RFPs ask for documents  
11 sufficient to show this type of information.

12 So we are running the search strings because typically  
13 when you don't think there are documents about something  
14 specific and you are asking for documents specific --  
15 sufficient to show that information, you run search strings.  
16 So you figure out if they are there.

17 And that's what we are trying to do; run the search  
18 strings. Figure out if there are any documents that show the  
19 extensive valuation. We don't think there are.

20 From our perspective, we think the first step here is to  
21 run the search strings. See if they return anything seeking  
22 the type of information Plaintiffs are seeking, and then we can  
23 take it from there.

24 The other issue we are having is that after Plaintiffs  
25 sought that type of information, they did send us the letter

1 that Mr. Ko is describing. And the letter asks for these very  
2 five very broad categories of documents. It asks for  
3 Facebook's marketing plans, Facebook's business plans.

4 And Plaintiffs now seem to be taking the position that  
5 Facebook should produce all documents responsive to their  
6 letter, so all of its marketing plans, all of its business  
7 plans, even if they don't show the type of information sought  
8 in the RFPs.

9 So one of the issues that the parties started discussing  
10 yesterday is: Is Facebook required to produce documents  
11 responsive to the RFPs or is Facebook required to produce  
12 information responsive to this letter that really strays pretty  
13 far from what the RFPs ask for?

14 **THE COURT:** Well, this is what I would say: What you  
15 are required to produce is -- obviously the valuation of this  
16 data is at issue. That is relevant to a claim in the case.

17 And so what you need to do is figure out how you get  
18 there. There must be something. And it may not be it's at the  
19 micro level that the Plaintiffs were wondering. So maybe it is  
20 a more macro level. Maybe it is simply: How much money does  
21 Facebook make in a year, in a month, in a week, in a day from  
22 selling this information; right? That's one way of evaluating  
23 it.

24 Now, maybe that's not precisely called for by the RFP. So  
25 what?

1       What the RFP calls for -- you know what they want; right?  
2 And so the RFPs are kind of like a starting point. And now  
3 have a discussion and try to narrow it and get out what it is  
4 they are trying to do.

5       I don't think you would dispute that any financial  
6 document -- like the financial documents are going to be one  
7 way of valuing it. Maybe not every marketing plan,  
8 obviously -- obviously. Facebook must have a million marketing  
9 plans. But specific marketing plans. And you have a  
10 discussion.

11       So the RFPs are a starting point. I wouldn't get too  
12 caught up in that. We all agree that how Facebook values this  
13 data, some way, is relevant. And so let's figure out a way of  
14 getting those. That's what I would say on that.

15           **MR. LOESER:** Your Honor, if I may just very briefly --

16           **MS. STEIN:** Your Honor, I think the fundamental  
17 disconnect is that Facebook doesn't sell user data, so Facebook  
18 doesn't value user data in the way that Plaintiffs would like  
19 it to exist.

20       It just -- it is not something that is part of Facebook's  
21 business model. So I think we have been talking past each  
22 other.

23       And we are happy to meet and confer with them to see if  
24 there is something else that Facebook does value, but it  
25 doesn't -- because it doesn't sell user information and user

1 data, it's literally just not something that goes into their  
2 valuations.

3           **THE COURT:** Or they trade it or whatever it is. Or  
4 maybe as Ms. Weaver said, the 30(b)(6) -- did we lose -- oh,  
5 no, there she is. She just moved on me.

6           **MS. WEAVER:** We just moved. You moved too,  
7 Your Honor.

8           **THE COURT:** Did I? I don't know. Apparently we have  
9 a new thing of Zoom that you can move the screens, but that  
10 doesn't seem to be working. Anyway -- and figure it out.

11          But I guess I would say is that I hear what you are  
12 saying, Ms. Stein. So that's what you should be discussing.  
13 Like, there is going to be some way -- it has some value,  
14 somehow or another because of (inaudible) -- and for some  
15 purpose, whatever it is. And then, you know, if -- it is not  
16 going to be a line item, obviously, that puts a value on it.

17          And so that just sort of should be what the discussions  
18 should be about. I can see that is going to be different from  
19 search terms. If it is coming from financial documents, that  
20 is something different. Okay.

21          **MR. LOESER:** Sorry to interrupt. I guess, just by way  
22 of making it clear and so that we all understand what you are  
23 saying, there is search strings; and that will get certain  
24 information, e-mail, other things.

25          And then there is all this other information that is not

1 even -- it is not even possible that it would be unearthed by  
2 those search strings. That is the targeted search information.

3 That is what we will be meeting and conferring and  
4 negotiating more with Facebook. I mean, it hasn't been going  
5 on a long, long time.

6 I am very happy to hear you describe the process where,  
7 you know, we start with RFPs and then we engage in these very  
8 lengthy and substantive conversations about how to clarify  
9 them, and that's what the letters often have to do with.

10 So I do think that that process that you described is what  
11 has happened here, and I think it is important that we continue  
12 to utilize that process so that requests can be clarified in  
13 letters and so on.

14 **THE COURT:** And narrowed. Always narrowed.

15 **MR. LOESER:** Or narrowed. Or if they are really  
16 unclear -- as Facebook often claims they are -- then whether it  
17 is narrowed or just made more clear, one way or another it  
18 becomes evident what it is we are searching for.

19 **THE COURT:** Yeah. I always like to say is sort of  
20 when -- obviously not in a bigger complex -- but when I have  
21 disputes, I will say to one side: What is it that you want?  
22 Just describe to me -- not -- when somebody starts reading to  
23 me their document requests, I stop them. No. No. Just tell  
24 me in plain English what is it that you want. And then have  
25 the other side respond. Do you have that or what do you have;

1 right? That's what it should be.

2 I do want to go back, though, to the -- what is little A  
3 in the Plaintiffs' statement, the search terms and the  
4 schedule, because the final proposals are due December 24th.

5 And were you able to work something out with that or --

6 **MS. KUTSCHER CLARK:** We are --

7 **MS. WEAVER:** We are still negotiating that, I believe.  
8 Go ahead, Martie. My apologies.

9 **MS. KUTSCHER CLARK:** No, no, no. I was just going to  
10 say the parties met and conferred about it yesterday, and we  
11 are working through some proposals.

12 One thing the parties have started discussing is whether  
13 there should be a little bit of a detente around the holidays  
14 this year.

15 **THE COURT:** Oh, that's exactly what I wanted to do. I  
16 actually wanted to impose one.

17 (Laughter)

18 **THE COURT:** I did it in one of my other cases in Juul  
19 over Thanksgiving. I forbid the parties from communicating  
20 with each other from Thursday, Friday, Saturday and Sunday.  
21 And I would like to do the same thing in here.

22 **MR. LOESER:** Just like the Battle of the Bulge,  
23 Your Honor.

24 **MS. WEAVER:** That's right. That's exactly right.

25 **THE COURT:** So I will let you figure out what it is;

1 but you need, I would say, five business days. That would be  
2 my proposal. Really the case will move along; go along. Five  
3 business days, no communications between the two sides for  
4 those five days in a row and you figure out what they are.

5 So important. So important. So important especially -- I  
6 mean, you know, people are not going to be -- I mean, it's a  
7 stressful time right now. It is a stressful time, and we all  
8 need a break and to be able to just chill and focus on the most  
9 important things -- this case is important -- but the most  
10 important things. So I would like you to agree to a five-day  
11 detente. It can be longer if you want but at least five days.

12 **MS. WEAVER:** Agreed.

13 **MR. MONTGOMERY:** Your Honor, can you impose no  
14 communication within our firm as well?

15 **THE COURT:** Mr. Montgomery, yeah --

16 (Laughter)

17 **MS. KUTSCHER CLARK:** The challenges.

18 **MS. STEIN:** I do rely on opposing counsel for Netflix  
19 recommendations so --

20 (Laughter)

21 **MS. WEAVER:** We can make an exception.

22 **THE COURT:** The Queens Gambit, have you guys watched  
23 that? I finished that last night.

24 **MR. LOESEY:** Excellent. That is -- a very good  
25 recommendation, if you haven't seen it, which we have now

enjoyed is Ted Lasso.

**THE COURT:** Ted Lasso, okay. I don't know that one.

**MR. LOESER:** Your Honor, this might be testing the limits of your judicial authority; but if you could turn off social media for five days --

**THE COURT:** For the entire country?

**MS. WEAVER:** Yes.

(Laughter)

**THE COURT:** Perhaps.

**MS. KUTSCHER CLARK:** I think our client would be opposed to that.

**MS. WEAVER:** Yes, we understand the difficult position you are in.

(Laughter)

**THE COURT:** All right. So, Mr. Montgomery, I will strongly recommend that -- internally as well to the extent it can be done -- and really, you know, no judges should be imposing deadlines for whatever between Christmas and New Year's; right. So you should be able to check out for that time.

Okay. Great.

**MS. WEAVER:** Just to be clear, it was in our proposal to end it on December 24th. So we are fine with the moratorium.

**THE COURT:** It sounds like everyone is which is good.

1 Okay.

2       **MS. WEAVER:** Yep.

3       **THE COURT:** So the next issue is the named Plaintiffs'  
4 data. And here I actually am kind of confused because Facebook  
5 suggested that there may not be any data other than what they  
6 have already produced. And then I don't understand why (video  
7 freeze interruption.)

8       **MS. KUTSCHER CLARK:** Right, Your Honor.

9           So, as we noted in our submission, we learned for the  
10 first time in Plaintiffs' sur-reply brief on the named  
11 Plaintiffs' data that what they are really seeking is only data  
12 about the named Plaintiffs that was shared with third parties.

13          And for us seeing that in the sur-reply brief was a really  
14 big aha moment because we had spent literally hundreds of hours  
15 meeting and conferring about data that is never shared outside  
16 of Facebook.

17          So now that we understand what they are really seeking is  
18 the type of data that is actually shared or made accessible to  
19 third parties, we have been taking a much closer look at what  
20 would be responsive to that. And as we currently understand,  
21 what has been produced really does cover that universe.

22          But we obviously want to be a hundred percent sure that  
23 that is correct, and we are talking about a 13-year period, so  
24 it is a very long time.

25          So we have been conducting a very careful investigation

1       within the company to be a hundred percent sure that the  
2       materials produced to date reflect the full scope of any data  
3       that could have been shared or made accessible to third parties  
4       about the named Plaintiffs since 2007.

5           And if we do come across anything additional, we will  
6       obviously report that to Plaintiffs and discuss a production  
7       format with them, but to date we have not come across anything  
8       that has not been produced already that could have even  
9       potentially been shared with third parties.

10           **MR. LOESER:** Your Honor, if I may, I think there will  
11       probably be multiple comments in response to that statement.  
12       That makes no sense to us at all.

13           First of all, the question of their brief, which they  
14       quote in their statement, talks about information, in fact,  
15       shared. And what our brief said in our reply was information  
16       shared or made accessible.

17           And we were very careful to use that language, "made  
18       accessible," because Facebook has said for a long time that it  
19       doesn't keep records of what it actually shares, which seemed  
20       hard to believe to us.

21           But in order to avoid a semantic game, we also included  
22       the reference to "made accessible" because whether it was  
23       shared, whether they have records of it, if it was put in a  
24       place or utilized in a way where third parties had access to  
25       it, that substantially expands the universe of potential

1 information.

2 Also, as, Your Honor --

3 **THE COURT:** That's what I heard Facebook just say.

4 They agree.

5 **MS. KUTSCHER CLARK:** Yeah.

6 **THE COURT:** It is made accessible, not just shared.

7 **MS. KUTSCHER CLARK:** Yes.

8 **MR. LOESER:** Then, perhaps, we need some clarification  
9 on what they interpret "made accessible" to mean because it  
10 doesn't mean the same thing as actually shared.

11 And so if we could hear clearly from Facebook that they  
12 agree with that, that would be helpful.

13 Second, the nature of the information that Facebook was  
14 ordered to produce is such that it is impossible to believe  
15 that there isn't information that exists.

16 We are talking about entirely distinct categories of  
17 information from what they have produced. They have produced  
18 the information that users post. As Your Honor well knows,  
19 what they didn't produce was all the information collected  
20 from -- off platform activities and inferred from and about on  
21 and off platform activity.

22 And it is, frankly, just impossible for us to believe that  
23 while the universe of potential discoverable information was  
24 expanded threefold, actually, there isn't anything that fits  
25 those categories, categories which were derived from our review

1 of Facebook's production to see what else do they do and what  
2 else do they do with it.

3 So it just -- it just seems baffling to me that after all  
4 of this fighting and all their effort to keep us from getting  
5 this information, they are now coming back and claiming it  
6 doesn't really exist.

7 **MS. KUTSCHER CLARK:** Your Honor --

8 **MS. STEIN:** So, Your Honor, respectfully, we are not  
9 doing anything to prevent Plaintiffs from getting information.

10 We spent months dealing with Plaintiffs taking the  
11 position that even if the data was in a black box that was  
12 inaccessible to anyone, that they would want to know what was  
13 in that black box. So they did a complete 180 in their  
14 sur-reply brief.

15 Leaving that aside, we are trying to figure out whether  
16 there is anything else to be produced. The inferences that  
17 Mr. Loeser just mentioned -- Facebook does not share or make  
18 accessible inferences with third parties, period, full stop.

19 Those inferences are the way that Facebook has its  
20 business model. It uses those inferences to run its business.  
21 It does not sell those inferences. It doesn't share those  
22 inferences. It does not make them accessible.

23 That is why companies come to Facebook and ask Facebook to  
24 help with targeted advertising because we, Facebook, will not  
25 share those inferences with anyone. That would destroy

1 Facebook's business model.

2           **MS. WEAVER:** So, if I may, we have received no  
3 production of data Facebook receives from third parties.

4           We have received no inferred data. And this is the  
5 semantic game that Facebook has played since the beginning that  
6 analysts and governments have challenged.

7           Facebook says: We do not sell your data. And it may be  
8 true that they don't put it in a box and hand the data over the  
9 way you do a widget. They do sell inferences.

10          And what we need to know is how our clients were targeted  
11 based on the amalgamation and analysis of all the data that  
12 Facebook is pulling from everywhere. So we want the inferred  
13 data.

14          I want to know if I have been targeted as a 50-year-old  
15 woman in Oakland as having a higher insurance risk or a  
16 different financial risk.

17          That is how Facebook makes its money, and they have  
18 refused to be transparent about this all around the world. But  
19 we are in this lawsuit. They keep telling us they don't  
20 make -- and this ties back to the revenue argument.

21          Let us see how they make their money. Maybe they are  
22 right. But all we have been doing is fighting with the  
23 lawyers. It is time for evidence.

24          We would love a 30(b) (6). We would love documents. We  
25 would love data. All we have been getting right now is sitting

1       in Facebook Zoom meet-and-confers and positions. And we are  
2 ready for the evidence.

3           **MS. KUTSCHER CLARK:** Your Honor, I have two quick  
4 responses.

5           **MR. KO:** Your Honor --

6           **THE COURT:** Let's let Ms. Kutscher go.

7           **MR. KO:** Okay, Martie.

8           **THE COURT:** We can't hear you -- at least I can't hear  
9 her.

10          **MS. KUTSCHER CLARK:** Can you hear me now? I'm  
11 speaking more loudly. Okay.

12          First of all, this case is not about targeted advertising.  
13 Judge Chhabria said very clearly in his Motion To Dismiss order  
14 that the case is not about targeted advertising. Plaintiffs  
15 conceded that the case is not about targeted advertising in the  
16 briefing on this issue.

17          In terms of the inferences, the off-Facebook activity, it  
18 is not correct that none of that information has been produced.

19          The information we produced previously includes thousands  
20 and thousands of pages of users off-platform activity. It also  
21 includes massive lists of user's interests that Facebook has  
22 derived from their activity on and off the platform.

23          During the briefing Plaintiffs were asking for more of  
24 that information. They were asking for information the  
25 Plaintiffs are not able to see themselves that Facebook might

1 have in those categories.

2       What we have been doing is trying to find out -- and we  
3 have conducted extensive, extensive investigations at Facebook  
4 to understand whether there is any additional information in  
5 any of those categories that could have potentially been made  
6 available to a third party in any way, shape or form.

7       And the answer we are repeatedly getting is no. What has  
8 been produced represents the universe of what could have been  
9 made available in any way to a third party.

10      But, again, we are continuing to conduct this  
11 investigation because we want to be a hundred percent sure, and  
12 that is what we are working on. But, in the meantime, we have  
13 not come across any type of information that is ever made  
14 accessible; has ever been made accessible that is outside what  
15 has already been produced.

16           **MS. WEAVER:** Your Honor, we view this as them trying  
17 to re-litigate an order that you already issued in Discovery  
18 Order Number 9.

19      The scope of the case is whether private information sent  
20 in voice -- let's say Facebook Messenger was used and  
21 amalgamated with our information to target the Plaintiffs and  
22 either --

23           **THE COURT:** No, no, no, no. I don't think so. I  
24 don't think so; right. This is -- this came from Cambridge  
25 Analytica and that they had access to information.

1           **MS. WEAVER:** Right.

2           **THE COURT:** Right.

3           **MS. WEAVER:** Right. And they used it to -- they  
4 targeted lazy liberals to stay home and not vote in the  
5 election. This is exactly Cambridge Analytica. They drew  
6 inferences about people and crafted messages to them to get  
7 them to stay home.

8           Or it recently came out that 3.5 million African Americans  
9 were targeted with message to influence their voting behavior.  
10 This is squarely within Cambridge Analytica, and this is  
11 exactly the case.

12           So people need to understand how they are being --

13           **THE COURT:** What did you mean in your sur-reply by  
14 "shared"? I guess that's the question.

15           **MS. WEAVER:** Or reasonable made accessible. Yeah, I  
16 mean, that's -- the issue is --

17           **THE COURT:** What is -- to the point, what does "made  
18 accessible" mean?

19           **MS. WEAVER:** Right. So I -- I'm Cambridge Analytica,  
20 and I want information so that I can target individuals who I  
21 think will respond to my messaging in an election. And our  
22 nine named Plaintiffs, many of them feel they were targeted in  
23 this way.

24           So Facebook ran its algorithm based on all of the data  
25 that it had, and it didn't separate the private and the

1 public -- at least Facebook has never even taken that position  
2 in this case -- and said: Here are the people.

3 So they are targeting, and we want to see --

4 **THE COURT:** Have they provided the named -- the names  
5 of those people?

6 **MS. WEAVER:** No. They just allowed the messages to go  
7 through to them, so they are targeted.

8 **THE COURT:** So Cambridge Analytica didn't have that  
9 information then?

10 **MS. WEAVER:** Cambridge Analytica also got data but  
11 also targeted them. It's both.

12 **THE COURT:** Okay. And so it is the data that  
13 Cambridge Analytica then got?

14 **MS. WEAVER:** That's a piece of it, and it is also how  
15 they are targeted going forward.

16 What we don't know is what the business partners and --  
17 that is a separate -- Cambridge Analytica got it through an  
18 app, through Kogan's app.

19 But what is also going on is the data sharing -- which the  
20 business partners and the white listed apps -- and we are not  
21 getting the data that they have on the Plaintiffs. We don't  
22 have one shred of data. All we have is this, you know, the  
23 actual platform activity.

24 So we need -- what we would really like is to take some  
25 evidence on this, Your Honor, because --

1           **THE COURT:** You mean the 30(b) (6)?

2           **MS. WEAVER:** That would be great.

3           **THE COURT:** Well, I think that is probably where we  
4 are at now. I think --

5           **MS. WEAVER:** That would be great.

6           **THE COURT:** I think there is this disconnect, right,  
7 or disbelief -- I guess I should say more than disconnect -- as  
8 to how Facebook operates. And so we just need somebody under  
9 oath saying: No, this is how it operates.

10          **MR. KO:** Your Honor, just one last thing on this --  
11 not to belabor the point -- I wish I could share my screen  
12 right now. I'm looking at Facebook's data use policy right now  
13 in the section that says "information that we share."

14          And included in that category are sharing with third-party  
15 partners, and that includes partners who use Analytica  
16 services, measurement partners, partners offering goods and  
17 services in our products, advertisers, vendors and service  
18 providers, researchers and academics, law enforcement or  
19 pursuant to legal request.

20          So they, by their own admission in public and pursuant to  
21 their data use policy, talk about the information that they  
22 share --

23           **MS. WEAVER:** Share.

24          **MR. KO:** -- with third parties. So I know Ms. Stein  
25 said full stop, they don't share anything. That's --

1           **THE COURT:** No, no, no, that's not what she said.

2 What she said is they produced what they shared, not that they  
3 don't share anything.

4           **MS. WEAVER:** But that's not --

5           **MS. STEIN:** I said that we don't share inferences.

6           **MS. WEAVER:** All we had was a subset of user's  
7 platform activity. I'm sorry, Deb.

8           **MS. STEIN:** I said we don't share inferences. That is  
9 what I said.

10          **MS. KUTSCHER CLARK:** Your Honor, I think a big piece  
11 of what is getting lost here is third parties frequently draw  
12 their own inferences, and that might have been what happened in  
13 Cambridge Analytica. We know that happens in other settings.

14          So Facebook shares various categories of information, and  
15 third parties might use that information in different ways.  
16 They might combine that with information they have. We don't  
17 have visibility into that.

18          But once the information is shared, third parties might  
19 use it to form their own conclusions; but that's not  
20 information we would have.

21          **MS. WEAVER:** But we don't even have the data that  
22 Cambridge Analytica got; right?

23          **THE COURT:** I don't know. Is that true?

24          **MS. KUTSCHER CLARK:** I believe you do because  
25 Cambridge Analytica only received data that Kogan was able to

1 access through his app and what --

2           **MS. WEAVER:** Can you identify to us by Bates number  
3 which documents those are because I don't believe we have that.

4           **MS. KUTSCHER CLARK:** That's not the way the materials  
5 have been produced.

6           What we have produced is the universe of data that could  
7 have been made accessible to third parties.

8           We did not produce nor was there a request specifically  
9 for information requested by Kogan.

10          **MR. LOESER:** So, Your Honor, just -- this is an  
11 interesting discussion, and I think Your Honor has rightly  
12 identified that the parties, frankly, are just -- these are  
13 lawyers talking about things that -- we need evidence. A  
14 30(b) (6) is an excellent idea.

15          We just don't believe how -- their description of what is  
16 or is not shared or made accessible. We need to put somebody  
17 under oath and have them testify about that.

18          The documents that we have seen in their production that  
19 describe their practices talk about sharing; talk about  
20 absorbing off-platform activity; talk about sharing inferences.

21          The ADI investigation where they sent their own  
22 questionnaires out to apps asked the apps to identify any  
23 information that was obtained from Facebook and inferences  
24 drawn from it.

25          And so there is a huge disconnect between what we think is

1 going on and the way they are describing. The real virtue of  
2 someone under oath testifying is that we can get through the  
3 semantics and just figure out really what happened. So I do  
4 think that you are right; that it is time to do that.

5 Facebook can read your order. They know what they are  
6 supposed to do. I assume they are going to go out and comply  
7 in good faith with that order. And the sure test to whether  
8 that happens or not is when we get somebody under oath and they  
9 testify about what exists and what doesn't exist.

10 **THE COURT:** Why shouldn't we do that?

11 **MS. KUTSCHER CLARK:** Your Honor, I would respectfully  
12 request that before we move into a deposition, that we have the  
13 opportunity to complete our investigation because we are  
14 working through that right now because, again, we want to make  
15 sure that what we understand is correct.

16 And obviously to even prepare a 30(b)(6) deponent, we  
17 would need to complete that sort of investigation. And I think  
18 it is going to take some more time.

19 Again, we are talking about a 13-year period, and data was  
20 shared in different ways with different source of third parties  
21 over that period. And this is a pretty large historical  
22 exercise to look into.

23 **THE COURT:** Right. But I don't know why we can't -- I  
24 mean, you are doing that -- but get something on calendar and  
25 the Plaintiffs can draw up their questions, right, because that

1 is going to take some while, no doubt --

2 (Laughter)

3           **THE COURT:** -- to negotiate. And this isn't  
4 everything. This is just, like, let's just figure it out.  
5 Like, this is a big -- this is another big issue in the case.  
6 We have this disconnect.

7           Let's just figure out: How do they use this data? How is  
8 it shared? What do they mean by "made accessible?"

9           Maybe you limit it to a time period, so you don't need to  
10 complete the whole thing; right. I mean, the time period that  
11 we are most interested in -- or at least the first one -- is  
12 the Cambridge Analytica. That is how the whole case got here.

13           So what you do is start with a limited time period, and  
14 that would probably --

15           **MS. WEAVER:** We could do that, Your Honor, 2012 to  
16 2016 or 2017.

17           **THE COURT:** Much easier to prepare your witness on.  
18 You can then focus your investigation on that. We are just  
19 going to take it in chunks, I guess, in a way.

20           Let's do that because I think we are -- yeah, I keep  
21 hearing arguments. Let's get -- let's get a witness in there.

22           So what I would like you to do is: Plaintiffs, you should  
23 work on that notice. It is not an everything, all, whatever.  
24 This is -- let's just figure out --

25           **MS. WEAVER:** Targeted.

1                   **THE COURT:** Targeted disagreement, limited period of  
2 time.

3                   **MS. WEAVER:** We propose maybe Thursday, January 14th,  
4 or Friday, January 15th, for the data, 30(b) (6) and --

5                   **THE COURT:** I don't want to talk to you guys -- I  
6 don't want to do that right now. You guys do that.

7                   **MS. WEAVER:** Okay. We will work it out.

8                   **MS. STEIN:** I also really -- respectfully to  
9 Ms. Weaver's point of getting something on calendar -- we need  
10 to know what the topics are. We need to agree on the notice  
11 and the subject --

12                  **THE COURT:** I agree with that. I was thinking early  
13 February especially since we have that five days in there.

14                  **MS. WEAVER:** Fine.

15                  **THE COURT:** You need to give them notice first.

16                  **MS. WEAVER:** Fine. We will do that.

17                  **MR. LOESER:** I think we should maybe have a schedule  
18 for when the notice should be completed or else I can see this  
19 dragging out forever.

20                  **THE COURT:** So that's up to you. What would you like  
21 your deadline to be?

22                  **MR. LOESER:** Why don't we take, folks, seven days  
23 enough to draft our notice?

24                  **MS. WEAVER:** Yes.

25                  **THE COURT:** And, perhaps, Facebook can respond within

1      seven days with adjustments if this falls on New Year's Eve,  
2      which it probably does. So maybe add a few more days there.  
3      But I think that's plenty of time to negotiate this targeted  
4      notice.

5           **MS. KUTSCHER CLARK:** Your Honor, I'm just looking at  
6      the calendar quickly. If Plaintiff took seven days to give the  
7      notice, that means Facebook would have to respond over the  
8      holidays even if we had two weeks to respond.

9           **THE COURT:** So extend that.

10          **MS. KUTSCHER CLARK:** So I think we would need until at  
11      least early January, probably the second week in January, to  
12      respond if we are not going to interfere with people's  
13      holidays.

14          **MS. WEAVER:** So maybe January 11th, Martie?

15           **THE COURT:** That's what I was going to suggest.  
16      January 11th.

17          **MS. KUTSCHER CLARK:** So we would get the notice on the  
18      16th?

19           **THE COURT:** By the 16th.

20          **MS. KUTSCHER CLARK:** And respond by the 11th?

21           **THE COURT:** Yeah.

22          **MR. KO:** Well, why don't we -- maybe I'm speaking out  
23      of turn on my side -- but why don't we give ourselves a little  
24      more time to put together the notice then if -- you know, one  
25      week from today, we could -- I'm thinking maybe Friday, the

1 Monday after that?

2           **MR. LOESER:** Why don't we take ten days, and then it  
3 balances out a little bit. That's fine.

4           **THE COURT:** Well, let's see. So if you gave it to  
5 them by the 18th.

6           **MR. KO:** The 18th.

7           **THE COURT:** Right. Then we have two weeks of the  
8 holidays. One week is going to be a non-working week, and  
9 there are five days in there.

10          Does the 11th still work for that with Facebook or how  
11 about until the 13th?

12          **MS. KUTSCHER CLARK:** Yeah.

13          **THE COURT:** This is your initial response, right, your  
14 initial response. So I think the 11th. That gives you the  
15 entire week of the 4th.

16          **MS. KUTSCHER CLARK:** Okay. I think it would be  
17 helpful to have a little bit of guidance on the scope of this  
18 and what the topics would be, which would hopefully help to  
19 limit the number of disputes that might arise.

20          As we understand, the topics should be limited to the  
21 sharing or accessibility of user data during the 2012 to 2016  
22 time period; is that right?

23          **THE COURT:** Yeah. The topic is -- we went through  
24 this long motion on this production and the off-platform and  
25 what was covered by Judge Chhabria. Issued the order. And now

1 it is like we already produced everything, whatever. It is to  
2 figure out that question. It is to figure out that question.

3 **MS. WEAVER:** We would view it as what is responsive to  
4 Discovery Order Number 9, Your Honor. That is how we would  
5 frame --

6 **THE COURT:** That's that order; right?

7 **MS. WEAVER:** Exactly.

8 **MR. KO:** The three categories they identified, Judge  
9 Corley --

10 **THE COURT:** Discovery Order Number 9, perfect.

11 **MS. WEAVER:** Exactly.

12 **THE COURT:** Limited to discovery --

13 **MS. KUTSCHER CLARK:** Could I just ask a clarifying  
14 question because I think the parties have had a little bit of a  
15 disconnect here.

16 We read Discovery Order Number 9, particularly in light of  
17 Plaintiffs' briefing, to relate only to data that was shared or  
18 otherwise made accessible, as Mr. Loeser puts it, to third  
19 parties and is not generally about all of the data in those  
20 categories that Facebook has ever collected. It is about what  
21 was shared.

22 **THE COURT:** This is a 30(b) (6) to figure out what  
23 Facebook does. So now no doubt the deponent will talk about  
24 information that they collect but don't share; right.

25 And then we will talk about whether that is responsive or

1 not. This is so the Plaintiffs can figure out this is what  
2 Facebook does.

3 This is to sort of to verify the representation that yes,  
4 we collect this information -- inferential data, but it is not  
5 made accessible to third parties.

6 So they would have to talk about it; right? They would  
7 have to talk about that. And if it is not made accessible,  
8 then what do they do with it?

9 **MR. LOESER:** Your Honor, we really need a  
10 clarification because I think it does avoid another huge  
11 semantic game over what "made accessible" means.

12 And so I think that is the right way to go. I think that  
13 will allow us to understand what is the information and what  
14 did you do with it. That's --

15 **THE COURT:** Okay. All right. So the next topic was  
16 the privacy settings data. I don't know what to do -- to say  
17 about that.

18 **MS. WEAVER:** Your Honor, Leslie Weaver on behalf of  
19 the Plaintiffs.

20 So we -- this is the issue. What has been produced to us  
21 is not the way the data exists on the platform. And so when  
22 there is a post, normally I can restrict it to my friends Deb  
23 and Martie, and you can see that.

24 And they have asked us to identify what, you know, we  
25 contend is really at the heart of the case, which to us is what

1 was intended for restricted audiences.

2 And we can't do that in the format that they produced it.

3 This is again the Facebook platform activity. They produced it  
4 without consulting us as to format, and we just need to get --  
5 we just need that information. It is obviously at the heart of  
6 the case.

7 We are doing the best that we can to respond to their  
8 interrogatories with our own information. Like, we can see  
9 Facebook Messenger messages are restricted, so we have  
10 identified those; and we are talking extensively with the named  
11 Plaintiffs. They have been doing a lot of work, but we can't  
12 identify the posts right now because we can't see how they were  
13 restricted. It's that simple.

14 **THE COURT:** I guess one question I have for Facebook,  
15 I thought one potential argument you had was that the  
16 Plaintiffs did not restrict their data. You know, so it wasn't  
17 private data. Is that right?

18 **MS. KUTSCHER CLARK:** Your Honor, that might be true of  
19 certain data. The bigger issue for us is that Plaintiffs are  
20 suing Facebook alleging that Facebook shared their,  
21 quote-unquote, sensitive information.

22 And we have asked them to tell us what information they  
23 think is sensitive.

24 They have told us they can't do that unless we produce a  
25 version of their accounts that shows next to each item on their

1 account what the privacy setting was.

2 We have looked into this extensively, and Facebook  
3 accounts are not made for production in litigation and simply  
4 can't be produced in that format.

5 As I understand, to produce a Facebook account in the  
6 format Plaintiffs are asking for it, we would actually need to  
7 have engineers write new code.

8 To locate the privacy settings for individual items on an  
9 account, someone actually has to manually click on every single  
10 item and follow a link which will then display the privacy  
11 setting. It is not metadata. It is not something that can  
12 just be displayed next to the item.

13 Plaintiffs have access to their accounts, and they are  
14 able to do that. They can log into their accounts. They can  
15 look at the posts they are concerned about. They can look at  
16 any information on their account they are concerned about.  
17 Click the link and see what the privacy setting is.

18 What they want is for one of us or for someone at Facebook  
19 to click through every single item on their account -- and  
20 there are hundreds of thousands of pages, many of which might  
21 have 20, 30 items on them -- and then follow the link.

22 Screen-shot the pages and produce them back to them.

23 Again, this is something Plaintiffs can do. We have  
24 suggested that there might be a way to make it easier if  
25 Plaintiffs would look at their accounts and tell us what

1 information they are concerned about.

2 The accounts include all sorts of stuff. They include  
3 restaurant reviews, newspaper articles, cartoons, stuff that is  
4 not conceivably sensitive.

5 If they would tell us what information they think is  
6 sensitive -- and this was one of their interrogatories -- we  
7 could maybe take this limited list or a more targeted list of  
8 posts and pull it for them, and we would be willing to do that.

9 But what doesn't make sense is to have Facebook have an  
10 engineer or someone else click through hundreds and hundreds of  
11 thousands of pages of every single thing on the named  
12 Plaintiffs' profiles to then follow links to the privacy  
13 settling when presumably Plaintiffs have a sense of what they  
14 thought was sensitive when they alleged that Facebook shared  
15 their sensitive information.

16 **MS. WEAVER:** I can respond to this, Your Honor.

17 **THE COURT:** Yes.

18 **MS. WEAVER:** We have identified categories. What it  
19 seems Facebook wants us to do and what their interrogatories  
20 asked was us to identify by Bates number in what they produced  
21 what is sensitive by actual -- each post.

22 So we have begun the process of going through that, but  
23 here is the disconnect: They produced a snapshot in time of  
24 Facebook activity. They want us now to go to evidence -- you  
25 know, the Facebook -- users have not produced their own

1 Facebook platform to Facebook because Facebook has it.

2 I don't know how we would produce it to Facebook. I can  
3 go with a Plaintiff and look right now at a post and find what  
4 is restricted there post-by-post. And, of course, this would  
5 be millions or, perhaps, billions of posts. But that's fine.  
6 This case is a lot of work.

7 But that privacy restriction today may not be the same  
8 privacy restriction that is in the snapshot in time that they  
9 produced.

10 So we have given them examples. And I don't even know how  
11 to get that into evidence because that privacy restriction that  
12 they are looking at online hasn't been produced at all. This  
13 is -- this is the conundrum.

14 We have given them examples, examples of health and  
15 medical information, private information about families.

16 They will depose these people. These people will explain  
17 what they thought was private. And we will do whatever work  
18 Your Honor tells us to do, and we are engaging in this subset  
19 of a subset review right now to honor that.

20 But at the end of the day, that is not going to be the  
21 basis of our claims. That is not the evidence we are going to  
22 present at trial, and it's convoluted.

23 I would just say: Let's wait until they -- we can see  
24 everything. And the other thing is, this response will also be  
25 informed once we get all the data on the nine named Plaintiffs

1 in Discovery Order Number 9.

2 We have given them interim responses but it will change.  
3 Once these Plaintiffs understand everything that Facebook has  
4 collected about them, their responses to these questions are  
5 going to look very different.

6 **MR. LOESER:** Your Honor --

7 **MS. STEIN:** May I respond to that, Your Honor?

8 **THE COURT:** Yes. Go ahead, Ms. Stein.

9 **MS. STEIN:** So respectfully, you know, Plaintiffs have  
10 discovery obligations too. Facebook has been working its tail  
11 off. We have provided almost 500 pages in interrogatory  
12 responses. We are reviewing millions of documents here.

13 When we originally served RFPs, you may recall Plaintiff  
14 said: We don't want to do this as RFPs. Serve  
15 interrogatories.

16 We served interrogatories. We gave them lots of extra  
17 time. We literally got one page of substantive responses back  
18 to our interrogatories. What we are asking about is  
19 information about Plaintiffs' allegations. What is the  
20 sensitive information?

21 Plaintiffs have all of this at their -- in -- in their  
22 possession, custody and control. They know in their heads --  
23 we can't figure out what they thought was sensitive; what they  
24 alleged to be was sensitive. That is exclusively in Plaintiffs  
25 custody and control.

1       And what we need to know here -- and what Plaintiffs have  
2 an obligation to do -- is to sort through their information,  
3 tell us what was sensitive. They didn't want to do this by  
4 producing. We produced everything for them that was in their  
5 accounts.

6       They now want us to click through news articles, other  
7 things that they are posting and provide every privacy setting.  
8 We are not asking about the privacy setting. That's not what  
9 we asked.

10      We asked what was the sensitive information, and  
11 Plaintiffs said: We don't know what was sensitive. It depends  
12 on whether it was marked private. That's not true. What was  
13 sensitive would be a subset of it.

14      Not everything that is marked private is sensitive.  
15 People repost other people's posts. They put up restaurant  
16 reviews, newspaper articles. That may be all marked private,  
17 but that's not the sensitive information that matters here.

18      It is critically important that Plaintiffs do their  
19 obligation in discovery and not keep pushing everything onto  
20 Facebook to do.

21           **MR. LOESER:** Your Honor, just very briefly, I think  
22 again, we are just kind of having a practical problem; and a  
23 30(b) (6) may be helpful here as well.

24           The practical problem is Facebook maintains data. They  
25 have a platform for users to post things, and they produced a

1 bunch of information but not in the format in which it is kept.

2       The practical problem is: Is it possible for them to  
3 produce the information in the format in which it is kept as a  
4 result of which the Plaintiffs can easily respond to their  
5 discovery requests.

6           **THE COURT:** Well, can I just ask you first, though,  
7 why do the Plaintiffs need -- I mean, if the answer to the  
8 interrogatory is anything that was marked private or was  
9 restricted in some way is sensitive, then say that.

10          **MS. WEAVER:** We have, Your Honor.

11          **MS. LAUFENBERG:** Your Honor --

12          **MS. WEAVER:** Go ahead, Cari.

13           **THE COURT:** Then that's one answer. And then another  
14 answer is -- and then you go through what the person  
15 identified, regardless of what the privacy settings are; right.

16       Now, it may turn out that you identified something as  
17 sensitive; but you didn't -- your client didn't use any privacy  
18 setting. Okay.

19          **MS. WEAVER:** Here is the problem -- yeah, here is the  
20 problem with that -- I mean, we will do whatever you order.  
21 And if you want us to do that with this subset of information,  
22 which, by the way, is not everything they have ever posted.

23          **THE COURT:** I understand. You can only do it on what  
24 has been produced. I understand.

25          **MS. WEAVER:** Here is the issue: I am an individual.

1 These are humans in the middle of a pandemic with jobs, and we  
2 are asking them to go back and look through every post they  
3 ever made on Facebook. And we are going to have to ask them to  
4 do that again which we will do. That is what this case is  
5 demanding.

6 I can't remember what I posted in 2007 or 2009. And when  
7 I look at the post, I can't remember if it was private to me  
8 then or not. If I looked and saw that I only shared it with  
9 Cari, I would know oh, that is sensitive. But they would be  
10 guessing to say -- and we have given them examples of  
11 categories. Like I said, medical information, we can give them  
12 categorical examples.

13 And for these Plaintiffs -- for some of them it is  
14 political stuff. Some of it is not. They have different  
15 comfort zones with what they shared. We can go back and view  
16 this, but --

17 **THE COURT:** Are the examples tethered to the specific  
18 posts?

19 **MS. WEAVER:** Yes. And we can --

20 **THE COURT:** Ms. Stein is shaking her head no.

21 **MS. WEAVER:** So we have given them categories of  
22 messages, and we have told them we will give them examples and  
23 we are amending further.

24 **THE COURT:** So that's what you need to do.

25 **MS. WEAVER:** Okay.

1           **THE COURT:** You need to -- like if you are -- you  
2 can't just say medical and health information. What does that  
3 mean?

4           **MS. WEAVER:** Fine. We can find examples.

5           **THE COURT:** Give them an example; right?

6           **MS. WEAVER:** Yes.

7           **THE COURT:** If it is the fact that I visited this or,  
8 you know, shared with my friend this website about this drug;  
9 right. I mean, that is different; right.

10          So you need to tether it to examples. And they just need  
11 to answer to the extent they can. That's all it is, is to the  
12 extent they can do, based on what they have now.

13          What you have said is you can't figure out what the  
14 privacy setting was in 2007. Well, then, Facebook can't demand  
15 that you base your answer based on that if you don't know what  
16 it is.

17          **MS. WEAVER:** Right. Okay.

18          **MS. STEIN:** And, Your Honor --

19          **MS. WEAVER:** Thank you, Your Honor. We will do that.

20          **MS. STEIN:** We have never taken the position that  
21 their answer should be tethered to privacy settings. What we  
22 have asked is what Plaintiffs in their allegations considered  
23 to be sensitive and to identify the posts.

24          Now, back in 2007 you couldn't click -- you couldn't  
25 individually identify individual posts by privacy setting. It

1 was more -- more of a default for how you posted generally.

2 There weren't individual options when you posted something.

3 So, you know, respectfully having Plaintiffs just say:

4 Anything we marked private was also sensitive, I, frankly,  
5 don't think is a good-faith answer to an interrogatory  
6 response. It is just saying everything -- if everything was  
7 marked private in 2007, '08, '09 and so on, that includes, you  
8 know, public information that they were posting or reposting  
9 someone else's public post and it happened to be marked  
10 private, that doesn't make it sensitive.

11 And I think that Plaintiffs have more of an obligation to  
12 do an investigation in responding to interrogatories just the  
13 way Facebook did; right.

14 I mean, Facebook when we drafted our 500-page response, we  
15 spent hundreds, if not thousands of hours, you know, working on  
16 those responses and conducting investigations.

17 Now, maybe we did too much. And if we did too much, then,  
18 you know, shame on us; and we will know that going forward.  
19 But, you know, I do think that Plaintiffs have an obligation to  
20 tell us what is sensitive and not just say: It was under our  
21 privacy setting; ergo it was sensitive.

22 **THE COURT:** It would obviously have to be more  
23 specific. Look, they are going to amend their responses. They  
24 will be as robust as they can. I don't think you can expect  
25 them to identify every single one that is on there, but it

1 should be pretty robust, right, and tethered to actual posts;  
2 right.

3 Like political posts, that is what Cambridge Analytica is  
4 about, sensitive information. Here is examples of posts that I  
5 never expected would be made accessible to third parties.

6 **MS. LAUFENBERG:** Can I offer -- this is Cari  
7 Laufenberg on behalf of Plaintiffs. Can I offer one additional  
8 informative overlay, which is: The way that this information  
9 has been produced, it is completely uncontextual.

10 So, in other words, you get information by category. And  
11 so what we see are a long laundry list of posts that our  
12 clients made, but you don't see what they are made in response  
13 to.

14 So, again, that is making our jobs very difficult here.  
15 We are being incredibly diligent. We have produced hundreds of  
16 pages in response to these interrogatories. We are continuing  
17 to work. We will amend.

18 We can only work with what we have been given, and what we  
19 have been given is incredibly limited and makes it a tortuous  
20 task for our clients.

21 So we need to have contextual information in order to  
22 assess the sensitive -- whether this is sensitive information.

23 **MS. WEAVER:** We are not sure that the responses will  
24 be accurate because -- and that puts us in an impossible  
25 situation. It is not that we are not willing to do the work.

1 It is that we don't know how to get the answers right.

2       **MS. STEIN:** Yeah. We would certainly be open, if  
3 Plaintiffs wanted to, you know, reprint something, you know, if  
4 they don't like the format.

5       And, by the way, we reproduced their accounts in response  
6 to requests that we provide things in a different format. We  
7 already went through that exercise once. But if it is easier  
8 for Plaintiffs to print things out, you know, from their own  
9 account and do it that way, we are totally open to Plaintiffs  
10 using it that way instead of pointing to documents that have  
11 already been produced by us.

12       **MS. WEAVER:** Maybe we can make some progress, Deb.  
13 Can I ask this: Does Facebook maintain the limited audience  
14 information on the nine Plaintiffs' posts and activity? And if  
15 so, can you produce that to us?

16       **MS. KUTSCHER CLARK:** The only way to do it is to go to  
17 the live website and on the live website click each individual  
18 post and follow a link to see the setting.

19       And that's what we have been trying to convey. The only  
20 other way we could even produce the account information --  
21 I believe we have discussed this previously -- is to produce  
22 back to you guys a live link of the Facebook accounts which is  
23 what your clients already have.

24       **MS. WEAVER:** So how did Facebook --

25       **MS. KUTSCHER CLARK:** And none of that would be Bates

1 numbered.

2           **MS. WEAVER:** Let me just ask --

3           **THE COURT:** I'm going to have to stop you. I have to  
4 go at 11:00. We have, like, two minutes. So we can't do this.  
5 You guys just have to figure this out. So there is a couple of  
6 others things --

7           **MS. WEAVER:** We will.

8           **THE COURT:** -- I want to address. On the additional  
9 custodians, Mr. Zuckerberg, Ms. Sandberg, I think you should  
10 wait until all the documents are produced. Those will be very  
11 targeted once -- so I don't see any problem waiting for that.

12          On the voluntary dismissal of the named Plaintiffs, it is  
13 without prejudice; and they don't have to agree. Well, look,  
14 it happens all the time that a judge will deny class cert based  
15 on the adequacy of the named Plaintiff.

16          And if the Judge gives the named Plaintiff the opportunity  
17 to put forth a new named Plaintiff, then they have that  
18 opportunity. We are not cutting that off now.

19          It is not depriving Facebook of any discovery because if  
20 those people are put up later, then they get the discovery as  
21 to those named Plaintiffs.

22           **MS. STEIN:** Your Honor, our issue in the  
23 stipulation -- and I think, frankly, we worked through some of  
24 this with Plaintiffs yesterday.

25           **THE COURT:** Okay.

1           **MS. STEIN:** We -- we are fine stipulating to the  
2 dismissal of certain named Plaintiffs without prejudice to  
3 their being in the class. We don't want to waive any right in  
4 there, and I think Plaintiffs said that they are fine; that we  
5 don't need to.

6           What we were struggling with is that we don't -- if any  
7 Plaintiff wants to drop, that's fine. But they need to fish or  
8 cut bait but that specific named Plaintiff because it's -- you  
9 know, otherwise they should stay in case and, you know,  
10 proceed; but they are supposed to be representatives here.

11           **THE COURT:** No, no, no, I don't understand. I think  
12 that's where I disagree with you.

13           I think to get through the burden arguments and all that  
14 and to make -- they narrowed the class reps they were putting  
15 forward on the motion.

16           Should Judge Chhabria deny the motion and should he give  
17 them the opportunity -- he may or may not. He may not do it.  
18 It is going to be up to Judge Chhabria to put forth different  
19 class reps; right. It could be these people. It could be  
20 somebody else. I mean, presumably the ten they put up they  
21 think are their ten best anyway.

22           No. I don't think they have to -- I disagree with you. I  
23 don't think that's the case.

24           **MS. STEIN:** Well, Facebook wants to preserve its  
25 objections as to their being able to come back as named

1 representatives.

2           **THE COURT:** Of course. You can preserve -- what I'm  
3 saying is nobody has to give away anything. You can make that  
4 argument. What I'm saying is we are not going to hold this up  
5 so that they agree with your argument. You can preserve your  
6 argument. They can preserve their argument.

7           **MS. WEAVER:** To be clear, a lot of these Plaintiffs  
8 are disappointed, Deb. I'm not kidding. They want to be  
9 deposed by you. So --

10          **MS. STEIN:** You know --

11          **THE COURT:** Well --

12          **MS. STEIN:** We can arrange that, Leslie.

13          **THE COURT:** No, no, no, Ms. Weaver.

14          **MS. WEAVER:** Yes.

15          **THE COURT:** Right. When we get to our sort of absent  
16 class member discovery -- I've had this come up in a few  
17 cases -- they put forth, right, because the Defendants often  
18 want to go beyond the named Plaintiffs and take a few -- the  
19 first person they point to is -- they say: This person was a  
20 named Plaintiff. It is not too burdensome on them. I'm sure  
21 Facebook would be happy to depose them. So --

22          **MS. WEAVER:** My co-Counsel is going to be mad at me.

23          **MR. LOESER:** Your Honor, in the ten seconds that is  
24 left, I do want to just make a point that is something that has  
25 been pervasive which is a lot of arguments we have heard from

1 Facebook can be addressed by our better understanding of how  
2 data is maintained.

3 So, for example, this whole issue of how they produced the  
4 on-platform activity comes down to: How does Facebook maintain  
5 this data and can they produce it in a way that is in a native  
6 format where we can answer their questions easily by looking at  
7 the data instead of this sort of weird treasure hunt we have to  
8 go on through live Facebook pages to try and match up with  
9 their Bates productions?

10 I would suggest that of the 30(b) (6) topics that are  
11 really critical here is one that is just focused on how data is  
12 maintained for these various subjects. We could avoid a lot of  
13 fighting if we just had a better understanding of how the data  
14 is maintained for these different areas that we keep arguing  
15 about.

16 **THE COURT:** And we tried getting experts together  
17 months ago, months ago. If you want to do it, put it in your  
18 30(b) (6) and we will see --

19 **MS. STEIN:** Well --

20 **MS. WEAVER:** We tried that, Your Honor.

21 **MS. STEIN:** We would strenuously object to that  
22 because we went through months and months of informal ESI  
23 discussions. We have been down this road. We have had all  
24 these meet-and-confers.

25 The bottom line is Plaintiffs just don't believe us. And

1 we do all of this work as counsel to provide this information  
2 informally, and they just don't believe us.

3           **MR. LOESER:** Sometimes it is because our experts are  
4 telling us something very different. We like you very much.  
5 It is not anything personal, Deb. It is just when our experts  
6 tell us: That is impossible that Facebook doesn't maintain  
7 this in a way that they can use it and easily access it.

8           We just need -- it is no offense intended to anyone. We  
9 just need evidence. (Inaudible) can only go so far.

10           **MS. WEAVER:** If you give us the verifications to the  
11 interrogatories, we will know who at least is giving you the  
12 information. We can just depose them, but we have got to start  
13 taking evidence.

14           **THE COURT:** On the privilege log, can you submit a  
15 stipulation by the 18th that was on the briefing, on the ADI?

16           **MS. WEAVER:** Yes.

17           **MR. KO:** Yes, Your Honor.

18           **THE COURT:** I know that was Plaintiffs' proposal, so  
19 I'm really asking Facebook.

20           **MS. STEIN:** I think Martie --

21           **MS. KUTSCHER CLARK:** What is the question, Your Honor,  
22 about briefing?

23           **THE COURT:** The briefing schedule on the ADI  
24 privilege. By the 18th, just stipulate to the briefing  
25 schedule.

**MS. KUTSCHER CLARK:** Your Honor, I don't think we will be in a position to agree to a briefing schedule until we receive Plaintiffs' challenges to the privilege log. And this is something we discussed extensively previously; that we need to see what the challenges are.

We are going to need to meet and confer with them about the challenges so that we understand the scope and nature of what is being briefed before we set a schedule on it.

**THE COURT:** Okay. I have to go. I have got the call. So sorry. I'm out of time. I can't resolve that. When is our next conference, January what? It is not going to be this year.

(Laughter)

**MR. LOESER:** I'm guessing it is not the 1st.

**THE COURT:** That is correct.

**MS. WEAVER:** The 8th?

**THE COURT:** The 8th?

**MS. STEIN:** If we can make it the 15th, that would be better on our end.

**THE COURT:** The 15th at 8:30.

**MS. WEAVER:** Works for us, Your Honor.

**THE COURT:** Okay. I will see you then. I will do the best I can after today.

**MR. LOESER:** Thank you, Your Honor.

(Proceedings adjourned at 11:04 a.m.)

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3                   CERTIFICATE OF REPORTER

4                   We certify that the foregoing is a correct transcript  
5                   from the record of proceedings in the above-entitled matter.

6

7                   DATE:     Thursday, December 10, 2020

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10                  Marla F. Knox

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12                  Marla F. Knox, RPR, CRR  
13                  U.S. Court Reporter

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